IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 390 OF 2002.

Smt. Chitrakala Fal Dessai,
of major age, landlady,
resident of H. No. 936,
Velvada, Painguinim,
Taluka Canacona, Goa. .... Petitioner.

Versus

Shri Balu Marathe, alias
Mane, son of Jyotiba Marathe,
of major age, resident of
H. No. 866/D Velvada,
Painguinim, Taluka Canacona,
Goa. ... Respondent.

Shri Sudin Usgaonkar, Advocate for the Petitioner.

Shri C.A. Ferreira with Shri C. Fernandes, Advocates for the Respondent.

CORAM: SMT. RANJANA DESAI, J.

DATE: 30th JUNE, 2006.

ORAL JUDGMENT :

The petitioner is the original plaintiff in Regular Civil Suit No. 25/98 pending on the file of the Civil Judge Junior Division, Canacona. By this writ petition the petitioner is challenging the Order dated 30th September, 2002. By the impugned order the application filed by the petitioner under Order 7 Rule 14(3) r/w Section 151 of Civil Procedure Code is rejected.

2. The plaintiff filed the instant suit on 24th September, 1997 inter alia for a direction that she is the owner of the suit property. In the said suit she filed an application under Order 7, Rule 14(3) r/w Section 151 of Civil Procedure Code praying that documents mentioned in paragraph 5 of the said application which pertained to the suit property be allowed to be produced. It is the petitioner's case that the said documents are absolutely necessary for adjudication of the real controversy involved in the suit. According to the petitioner she had misplaced the documents and therefore she could not produce them at the time of filing the suit as well as at the time of production of the documents. In paragraph 5 of the application details of the documents are set out. Almost all documents are public documents except the documents at serial No.(f) which are notes of the partition of the suit property " Udkafond " and serial No.(j) which are land site plans.

3. To this application the defendant filed his reply. The defendant objected to the production of these documents on the ground that the petitioner had not stated when those documents were misplaced and in whose power and possession those documents were at the time of filing of the suit and at the stage of production of documents.

4. The application was rejected by the trial Court on the ground

that the suit is filed as back as in the year 1998. According to the trial Court the plaintiff has not shown sufficient cause as to why the said documents were not produced earlier. The Court further observed that the petitioner had relied upon these documents in another suit. Therefore the statement that these documents were misplaced and were not in the petitioner's possession is a false statement.

5. The learned counsel for the petitioner has assailed the impugned order on several counts. He submitted that by amendment of the Civil Procedure Code, the requirement of the plaintiff showing sufficient cause has been deleted. Therefore in the facts and circumstances of the case, in the interest of justice and to ensure proper adjudication of the controversy involved, the trial Court ought to have granted the petitioner's application. The learned counsel relied upon ***Ramnath Nandlal Dhoot & Co. and another v. B.R. Shroti and others (A.I.R. 1980 Bombay 387).***

6. On the other hand, the learned counsel for the respondent contended that the suit was filed in the year 1988. He submitted that such belated attempt to produce the documents should not be allowed by this Court. He submitted that no acceptable reasons have been assigned by the petitioner as to why he could not produce the said documents earlier.

7. Particulars of the documents which are sought to be produced are given in paragraph 5 of the application. It is apparent that all these documents except two documents are public documents. In this connection, I may usefully refer to the judgment in ***Vencu Gopal Tari and others v. Nilconta S. Xete and others (AIR 1975 Goa, Daman & Diu 32).*** In that case the Court was dealing with the Civil Procedure Code (1908). The Court was considering a case where the lower court had refused to allow production of certified copies of public documents. The Court observed that provisions of Order 13 have been enacted to secure a fair trial of the case and not penalise parties for not producing documents in time. The main object of R.2 of O.13 is to prevent parties from manufacturing evidence during the trial. The Court further observed that the stigma that the documents in question could be manufactured, does not attach to the public documents. In the circumstances the Court allowed production of copies of public documents. Since the documents except documents at serial No.(f) and (j) in paragraph 5 of the application are public documents, I see no reason why their production should not be allowed.

8. So far as document at serial Nos.(f) and (j) are concerned, I am of the opinion that in the interest of justice even they must be allowed to be produced. In this connection I may usefully refer to **Ramnath's** case (supra). In that case the defendant wanted to produce documents which

were neither disclosed in the affidavit of documents nor produced at or before settlement of issues. This Court considered Order 13, rules 1 and 2 of Code of Civil Procedure 1908. O.13, r.1 required the parties to produce all documentary evidence at or before the settlement of issues. Under R.2 of O.13, if a party failed to do so, he could not produce the said documents at any subsequent stage of proceedings unless good cause was shown to the satisfaction of the Court for non-production of the documents. This Court quoted the observations of the Patna High Court in ***Sir Hari Ram v. Lachmi Singh (AIR 1928 Pat 537)*** which read thus :-

> " O. 13, R 1 was enacted to secure a fair trial of a case, not to penalize parties for not producing documents in time. Its main object was to prevent parties from manufacturing evidence pending the trial to meet unexpected exigencies. Now, if there is no ground for believing that the document tendered has been manufactured, then, in my opinion, the Judge exercises his discretion improperly in rejecting a document on the ground that it was produced too late, for, as I have said, the rules to be found in the Code of Civil Procedure were not enacted for penalizing the parties, but to secure a fair trial of the case. "

This court accepted the explanation offered by the defendant and permitted the production of documents.

9. It is pertinent to note that rule 2 of Order 13 requiring good cause to be shown has now been deleted and by amendment sub-rule (3) is added to Order 14 which states that leave of the Court has to be obtained for production of such documents. But even accepting that while persuading the Court to grant leave, a party has to show cause why the documents could not be produced earlier, not a very strict, restricted and pedantic view can be taken of this provision. Ultimately the Court will have to ensure that all documents which assist it to resolve the controversy before it in an efficient manner are available for its perusal. Unless the Court comes to a conclusion that the facts are so gross that the only inference that can be drawn from the conduct of the party is that the documents which are sought to be produced are manufactured, the Court should not generally deny leave to produce documents because ultimately it is always open to the other side to cross-examine the party who produces the documents to establish that the said documents are not relevant or that the case based on the said documents is not true. In my opinion in this case, at this stage, it is not possible to come to a conclusion that the documents at serial nos. (f) and (j) are manufactured. However, that does not preclude the defendant, if he so desires, to cross-examine the plaintiff and persuade the Court to hold so. In the nature of things, no final opinion can be expressed by this Court on this aspect of the matter, at this stage.

10. In the interest of justice and in the view that I have taken, the application of the plaintiff will have to be allowed.

11. Hence the impugned Order dated 30th September, 2002 is quashed and set aside. Application for production of documents preferred by the petitioner is allowed. Petition is disposed of in the aforestated terms.

SMT. RANJANA DESAI, J.

sl.